

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**



75-1033

B  
P/S 7cc

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. T 4094

UNITED STATES OF AMERICA

Appellee

CLYDE O. LEACH

Defendant - Appellant

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

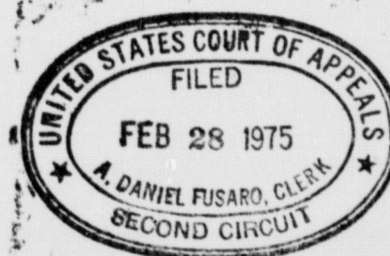
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APPENDIX FOR APPELLANT CLYDE O. LEACH

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Norman Cohen  
Attorney for Clyde O. Leach  
(Appointed by this Court)

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Burlington, Vermont  
February 28, 1974  
9:45 A.M.

16 grand jurors present.

- oOo -

JAMES C. MEE, being duly sworn, testified as follows:

EXAMINATION BY MR. REED

Q Please state your name, sir?

A James C. Mee.

Q What is your occupation?

A I am a Special Agent with the Federal Bureau of Investigation.

Q In the course of your duties as a Special Agent have you had occasion to investigate a stolen car matter involving Clyde O. Leach?

A Yes.

Q Will you relate how this happened and the results?

A On February 8 I received a call from Lindholm Motors advising me that a 1970 Volkswagen vehicle had been stolen February 2 or February 3 and recovered in Manchester, New Hampshire after it was sold to Valley Motors. On the afternoon of February 2 the car was tried out by an individual who identified himself as Clyde Leach. He and a friend of his drove the car around in the afternoon and brought the car

*Edna T. Jensen, Shorthand Reporter and Notary Public*

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MEMBER NATIONAL SHORTHAND REPORTERS ASSOCIATION

1 back to Lindholm Motors about 4:30 in the afternoon.  
2 The car was returned with the keys to Mr. Sennett,  
3 the salesman and left at the lot and the salesman  
4 said it was at the lot at eleven o'clock Saturday  
5 night. The car was still there with no license  
6 plate on it. At eight o'clock Monday morning  
7 it was discovered the car was missing. After the  
8 salesman informed Lindholm Motors the car was stolen  
9 he informed them an individual from Valley Motors  
10 was trying to sell it to him telephonically. I  
11 interviewed the person from Valley Motors who said  
12 he had purchased the car on Monday, February 4,  
13 from a person who identified himself with a Vermont  
14 driver's license as Clyde Leach and he paid \$250.00  
15 cash for the car which had a Vermont license on it  
16 at the time but was given to Leach at the time of  
17 the sale and after the transaction with money  
18 exchange Leach was taken to the bus station at  
19 Manchester.

20 Q Was Mr. Sennett subsequently shown photographs of  
21 Clyde Leach?

22 A Yes. He positively identified him from the photo-  
23 graphs.

24 Q You found the individual riding around with Mr. Leach  
25 on Saturday afternoon?

*Edna T. Jensen, Stenographic Reporter and Notary Public*

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1 A Yes. Edward Bosley said he had ridden around with  
2 Mr. Leach and the salesman later on had driven  
3 Leach home. Later on Leach came to his house with  
4 the key to the Volkswagen and said to him, I have the  
5 key, let's get the car and he declined. Another  
6 individual, Douglas Shand, an acquaintance of Clyde  
7 Leach, stated that about one o'clock in the morning  
8 of February 3 Leach came to him and said he had a  
9 Volkswagen to sell. He said he was interested in  
10 buying a car because he didn't have a car. He gave  
11 Leach a Vermont license plate he had taken off a  
12 car that he had junked and Leach also gave him a  
13 a handwritten bill of sale in preparation of the  
14 sale with Leach and Leach never returned.  
15 The car was described as a Volkswagen convertible,  
16 tan and black. Leach was arrested last Monday by  
17 the Rutland Police Department for the F.B.I. and I  
18 interviewed him in jail. He stated that he took the  
19 car and took it across state lines and sold it.

20 MR. REED: All right, Mr. Mee, just step  
21 outside and I will see if there  
22 are any questions.

23 - oOo -

24 11:15 A.M. - 11:16 A.M. - Grand Jury deliberating.  
25

1 UNITED STATES DISTRICT COURT  
2 for the  
3 DISTRICT OF VERMONT  
4

5 -----  
6 The UNITED STATES OF AMERICA

7 v.

Criminal Action #74-24

8 CLYDE O. LEACH  
9 -----

10 Hearing before The Honorable JAMES S. HOLDEN, Chief,  
11 U.S. District Judge, For The District of Vermont,  
12 on GOVERNMENT'S MOTION TO COMPEL HANDWRITING EXEMPLARS  
13 at Rutland, Vermont, 13 May 1974.

14 APPEARANCES:

15 The Honorable DAVID REED  
16 Assistant United States Attorney

17 NORMAN F. COHEN, Esquire  
18 Attorney for the Defendant.  
19  
20  
21  
22  
23  
24



1 witnesses, or any major witness, on the stand and make any  
2 effort to hide or somewhat deceive the Defendant or the Court  
3 of the fact that he has - of his criminal record, as ----

4 THE COURT: I - (SIMULTANEOUS VOICES)

5 MR. REED: ----this would be a nearly  
6 impossible undertaking to do it as to all witnesses as a  
7 matter of course.

8 THE COURT: The Court won't require  
9 you to.

10 MR. REED: Thank you.

11 THE COURT: Simply disclosures as to  
12 those with which you are acquainted. All right now, what  
13 further is there, Mr. Cohen? I will say off the record that  
14 I hope that ----(OFF THE RECORD CONVERSATION ENSUED)

15 MR. COHEN: I think the other points  
16 are satisfactorily answered down to #15, Grand Jury Minutes,  
17 and I am aware, let me say, of the Court's position with res-  
18 spect to requiring the production of the Grand Jury Minutes.  
19 I have submitted a Memorandum of Law on the matter and am aware  
20 also as the Court I am sure is aware, that it ordinarily  
21 charges with respect to indictments be returned substantially  
22 on hearsay and the Court frowns upon that.

23 Now, the limited investigation that I  
24 have been able to conduct in this matter, has established in my  
mind that there should be at least three Government witnesses  
in this case. Perhaps four. The F.B.I. Agent, a representa-  
tive of the local dealership from where the automobile was



1 allegedly taken by Mr. LEACH, and a party in NEW HAMPSHIRE  
2 to whom Mr. LEACH allegedly sold the automobile.

3 It is my understanding and I will  
4 stand corrected and apologize if I am incorrect, but it is my  
5 understanding that of the three parties I mentioned only one  
6 testified who would have testified before the Grand Jury.  
7 Two were not called.

8 The two were more immediate witnesses  
9 to the alleged perpetration of this crime than the  
10 Government agent.

11 Now, as I say, I may be wrong, but  
12 it is my understanding that neither of the last two gentlemen  
13 whom I mentioned before, were before the Grand Jury.

14 Now, it would seem to me then that as  
15 to the essential facts of the case, may well have been related  
16 in the third person to a Grand Jury, which is something I  
17 understand, and it's my recollection, that the Court would not  
18 favor in terms of its charge and if that is the case, then  
19 now is the time to determine that fact and not in the middle  
20 of a trial where our minds are on other matters.

21 Now, Mr. REED can correct me if I am  
22 wrong. But if my investigation is correct, then we may have  
23 a problem here.

24 MR. REED: Your Honor, Mr. COHEN  
said that I could correct Mr. COHEN if he is wrong and I will  
indicate that he is wrong, however, I can't respond to him on  
that matter now because I think there are some preliminary

1 legal matters concerning that, that I have asked leave of the  
2 Court to argue first that would be generally that the necessity  
3 for secrecy of the Grand Jury, which I previously cited, two  
4 Supreme Court cases, (cough) and JOHNSON.

5 Now, the COSTELLO case, although not  
6 cited as to this particular proposition also deals with hearsay  
7 as a basis for an indictment. Again now, I am arguing, ----

8 THE COURT: Go ahead.

9 MR. REED: I took it as an indication  
10 of Mr. COHEN saying that I could correct him if he were wrong  
11 and if I am out of order, I can't continue because I don't  
12 intend to factually correct him on that.

13 MR. COHEN: The ---I did want to ad-  
14 dress myself to secrecy as a second point of my argument and  
15 that is I think there's a very over-done anachronism with re-  
16 spect to Grand Jury minutes. It is somewhat perhaps similar  
17 to the cloak of national security which is being thrown around  
18 a, - rather liberally these days.

19 There's no secrets with respect to  
20 this offense. There is no secrets with respect to the witnes-  
21 ses. There is no threat to the life of the witness known to  
22 the witness known to the Assistant United States Attorney, ---  
23 Mr. LEACH does not have a record for violence. He might have  
24 a record for the perpetration of other crimes, but certainly  
not crimes against the person.

Mr. LEACH has indicated and my indi-  
vidual investigation has indicated who these witnesses are and



1 who they are going to be. It would seem to me that the pro-  
2 duction of Grand Jury Minutes with the exception of the -- with  
3 the exception of protecting the informants, which is the  
4 necessary function to which I will concede they should keep  
5 the Grand Jury Minutes until the time of trial would perform  
6 a more useful function than presenting the Grand Jury Minutes  
7 in the midst of the trial, when facts which appear there, and  
8 which may have formed the basis of one, the indictment, and  
9 two, the testimony of, in Court, which would correspond to the  
10 Grand Jury testimony, cannot be checked out. And for those  
11 reasons and under the facts of this case and under the facts  
12 of most cases which come before this Court, it would seem to  
13 me that the Government should bear the burden of displaying  
14 to the Court, the reasonable necessity other than the mere  
15 assertion of traditional practices of secrecy, to keep in these  
16 midsts secrets and hindering the preparation of trial and  
17 search for truth and the orderly trial of the matter.

16 Thank you, Your Honor.

17 MR. REED: I would like to make a  
18 few remarks in response to that if I may, Your Honor.

19 THE COURT: Yes.

20 MR. REED: My response would be most  
21 logical if I were to take Mr. Cohen's points in reverse, and  
22 speak first to the secrecy.

23 I think the reason for Grand Jury  
24 secrecy is much more broader than represented by the counsel.  
And it is not anachronistic, it is a tradition borne out of

1 UNITED STATES DISTRICT COURT  
2 For The  
3 DISTRICT OF VERMONT

4 -----)  
5 UNITED STATES OF AMERICA)

6 v.)

Criminal Action #74-24

7 CLYDE O. LEACH )  
8 -----)

9 Tried before The Honorable James S. Holden, U.S.  
10 District Judge, For The District of Vermont, and  
11 a Jury, at Rutland, Vermont, 23-25 July 1974

12 Appearances:

13 The Honorable DAVID REED  
14 Assistant United States Attorney

15 NORMAN F. COHEN, Esquire  
16 Attorney for Defendant.



1 Q. You knew where his wife lived?

2 A. I don't believe I knew that.

3 Q. Didn't ask that? Wouldn't have been in the format?

4 A. No.

5 Q. You knew he was married?

6 A. I knew he had been married, yes, from what he told me  
7 that he had been married, it was not verified by me.

8 Q. Mr. MEE, when you interview criminal defendants, the, do  
9 convictions always come in to these issues?

10 MR. REED: Your Honor, I object to that  
11 question it is way beyond the scope of the rebuttal testimony  
12 and it has no pertinence at all to the matter at hand.

13 MR. COHEN: We will withdraw it. No  
14 further questions, Your Honor.

15 MR. REED: We have none, Your Honor.

16 THE COURT: Very well, that is all,  
17 Mr. MEE.

18 MR. MEE: Thank you.

19 (WITNESS WITHDREW)

20 THE COURT: Anything further from the  
21 defendant?

22 MR. REED: The rebuttal is finished I  
23 guess.

24 MR. COHEN: Your Honor, we have  
nothing further.

THE COURT: Very well, the evidence is  
closed. (2:40 p.m.) Very well, the Court will have to rule on



1 some motions at this time so we will ask the Jury to return  
2 to the Jury room until summoned back.

3 (JURY WITHDREW FROM THE COURT ROOM)

4 MR. COHEN: May it PLEASE THE Court,  
5 I would like to renew our motion to dismiss the indictment  
6 at this time on the grounds stated on two prior occasions.  
7 I would like the Court to look at the Grand Jury minutes with  
8 respect to ruling on that motion. If it Please the Court, I  
9 have put a circle around line 18 on page 3 to indicate that  
10 is the only direct testimony in my opinion, offered.

11 (Document handed to the Court)

12 THE COURT: The Motion to quash the  
13 indictment is denied.

14 MR. COHEN: Thank you, Your Honor, may  
15 I approach the Bench to get the minutes?

16 THE COURT: Yes.

17 MR. COHEN: At this time, Your Honor,  
18 we would move for a directed verdict of acquittal on behalf  
19 of the Defendant, on the ground that the evidence taken in  
20 the light most favorable to the Government, the Government  
21 has failed to make a case.

22 THE COURT: Mr. Reed?

23 MR. REED: Your Honor, the defense  
24 put on a case of BURNS versus The United States. I still view  
the testimony from the evidence in the light most favorable  
to the Government and I would state that any conflict of testi-  
mony is, obviously then should be before the Jury and this trial,

Motions  
Government's Requests to Charge

1 if anything has some conflicts of testimony but as a matter of  
2 law, we have established more than a prima facie case.

3 THE COURT: Motion of the Defendant  
4 for Judgment of Acquittal is denied.

5 MR. COHEN: We have no further motions,  
6 Your Honor.

7 THE COURT: The Court will rule on  
8 the Requests to Charge at this time. I believe we will have a  
9 Charge Conference in Chambers, the defendant may be present.

10 (RECESSED AT 2:26 P.M. FROM THE COURT ROOM UNTIL 2:27 P.M.

11 IN OPEN COURT)

12 THE COURT: The Court will first take  
13 up the Government's Requests to Charge.

14 The Court will charge, grant in sub-  
15 stance #1 of the Government's Requests to Charge:

16 "The defendant is charged with having  
17 violated Title 18, U.S.C. Sec. 2312 which provides in perti-  
18 nent part:

19 "Whoever transports in interstate or  
20 foreign commerce a motor vehicle or  
21 aircraft, knowing the same to have been  
22 stolen, is guilty of committing a  
23 crime."

24 THE COURT: I think the Jury under-  
stands what a motor vehicle is. I won't get involved in that.  
I think it includes a Volkswagon but aircraft, motor cycles  
et cetera, I won't get involved in.

Government's Request to Charge #2:

"The term 'interstate commerce' in-  
cludes commerce between one State, Territory, Possession, or  
the District of Columbia, and another State, Territory, Posses-  
sion, or the District of Columbia. The term 'foreign commerce'  
includes commerce with a foreign country.



CERTIFICATE OF SERVICE

I, Norman Cohen, Esq. hereby certify that I have served the foregoing Brief and Appendix of Appellant Clyde O. Leach upon the United States of America by mailing a copy of the same, postage prepaid to David A. Reed, Esq., Assistant United States Attorney, P. O. Box 10, Rutland, Vermont 05701, this 26<sup>th</sup> day of February, 1975.

Norman Cohen  
Norman Cohen, Esq.